IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5605 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHUPENDRABHAI NARBERAM LADHANI

Versus

STATE OF GUJARAT

Appearance:

MR MK VAKHARIA for Petitioner

Mr S K Patel, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 07/09/2000

ORAL JUDGEMENT

The petitioner has preferred this petition under Article 226,14,19, 21, and 22 of the Constitution of India challenging the order of detention dated 19.5.2000 recorded by the learned District Magistrate, Amreli on the grounds stated in the said order. The petitioner

states that the aforesaid order is illegal and unconstitutional on the ground that the documents relied upon by the detaining authority have not been supplied to the petitioner. It has also been contended that notices were issued to two partners including the petitioner and that another partner has been released on the basis of the opinion obtained from the Advisory Board. That both the partners were doing the same business and activities and, therefore, when one partner has been released there was no reason for detaining the petitioner. That therefore, on this ground also the detention of the petitioner is illegal and requires to be quashed. The petitioner, therefore, prays that the detention order be quashed and set aside and the petitioner be set at liberty.

2. On receiving the petition Rule was issued. Mr S K Patel, learned AGP appears for the State. He has filed affidavit of the detaining authority (xerox of the fax message) and the affidavit of Mr P R Shukla, Dy.Secretary, Food Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar. The same may be taken on record.

3. I have heard the learned Advocates for the parties and have perused the papers.

Learned Advocate for the petitioner has submitted that the detaining authority has taken into account the licence for the purpose of detaining the petitioner. That this licence has been referred to in the notice at page 20 and it has also been referred subsequently time and again. That the copy of the said licence has not been supplied to him, meaning thereby that the document relied upon by the detaining authority for the purpose of detaining the petitioner has not been supplied and there is violation of principles of natural justice and, therefore, the detention is required to be quashed.

4. On hearing the learned AGP Mr S K Patel for the State, it is found that the copy of the licence was supplied to the petitioner and the copy thereof is found at page 40 of the petition which shows that copy of the licence was supplied to the petitioner. Therefore, there is no reason for the grievance of the petitioner and the petition, therefore, cannot be allowed and the detention cannot be quashed on this contention.

5. Another contention raised by the learned Advocate for the petitioner is that the proceedings had started against the two partners - Atulbhai Bhupendrabhai Ladhani

and Ketanbhai Babubhai Gangadia. It is also his case that out of the two, Atulbhai had filed another petition being Special Civil Application No.7808/2000. That the said detenu was released by the respondent on the strength of the opinion of the Advisory Board. That therefore, his petition was withdrawn on 10.8.2000 with the permission of the court. It is, therefore, his argument that when two partners were involved and both were doing the same business and activity and when one of them has been released on the opinion of the Advisory Board, then another partner i.e. the present petitioner cannot be continued to be in detention. For the purpose the learned Advocate for the petitioner relied upon a decision of this Court in the case of Madanlal Hiralal Savariya v. State of Gujarat & Ors, reported in 1999 CRI.L.J. 917. This Court considered the decisions of two different courts at paragraphs page 8 and 9. It would be relevant to reproduce the observations made in these two decisions of the Division Bench of the Allahabad High Court and Delhi High Court which can be gathered from para 8 and 9 of the said judgment which is reproduced as under:

"8. If on identical offence the shop keeper's detention was set aside the detention of the petitioner cannot be sustained. It is clear violation of Article 14 of the Constitution of India. A Division Bench of the Allahabad High Court in Shabban v. State of Uttar Pradesh Habeas Corpus Writ Petition No.13862 of 1993 decided on 6.10.1993 took a similar view regarding violation of Article 14 of the Constitution of India in matters of preventive detention. In this case the order of detention was passed against the petitioner and three others on the basis of the same incident and similar grounds. The Advisory Board did not recommend the names of three other persons involved in the offence and only recommended the name of the petitioner. It was held that the Advisory Board acted arbitrarily and the order of the release of the petitioner was passed.

9. The Delhi High Court also took similar view in the case of Suresh Chand Verma v. Union of India, Criminal Writ Petition No.3 of 1993 decided on 24.3.1993. It was a case under COFEPOSA where the order of detention was passed against the petitioner and two other persons. The grounds were the same. The order against two persons was revoked on the opinion of the

Advisory Board. It was found that the effect of revocation of detention of two persons on the opinion of the Advisory Board would be that the detention of the petitioner also deserves to be set aside."

6. Considering the aforesaid two decisions of the said two High Courts, this court has observed that it is clearly averred in ground 'G' of the petition that the shop-owner was released on the opinion of the Advisory Board. The case has not been controverted in the affidavit filed by the State. That on the other hand, it is admitted during the course of argument that the petitioner was released on the opinion of the Advisory Board. It has further been observed that consequently, it is a case of a clear violation of Article 14 of the Constitution inasmuch as one co-accused having identical role was released and his detention was set aside while the detention of the petitioner was maintained. That the petition therefore succeeds and is hereby allowed.

7. An attempt was made to argue by Mr S K Patel, learned AGP that the matter would relate to sleeping partner and active partner and sleeping partner must have been released and, therefore, active partner cannot be released. Learned Advocate for the petitioner has referred to a copy of the partnership-deed which is produced at page 89. This partnership deed shows that there are two partners and both of them have equal functions and equal duties. It nowhere shows that one of then is sleeping partner and another is active partner. There is no other material to show that the petitioner was an active partner and the other partner who has been released at the opinion of the Advisory Board was merely a sleeping partner.

8. In view of the aforesaid, considering the aforesaid decision of this court which has been the outcome of the following of two decisions of the High Courts referred to above, I am of the view that there is no reason to differ from the decision recorded by this Court in the earlier petition. The said decision was recorded as back as on 6.11.1998 and it has not been submitted that the said matter has been carried before the Superior Court and some judicial proceedings are pending before the superior court challenging the aforesaid decision. Having regard to the decision recorded by this court and considering the aforesaid aspects of the case, there is no material on record to show that the case of the petitioner can be distinguished from the case of his partner who has been released

earlier as referred to hereinabove. This is a fit case wherein the petitioner should get benefit of the said principle of equality and consequently, considering the facts and circumstances of the case, the petition requires to be allowed. The impugned detention order is required to be quashed and set aside.

In the result, this petition is allowed. The impugned order of detention dated 19.5.2000 passed by the District Magistrate, Amreli is quashed and set aside. The detenu is directed to be released forthwith, if not required in any other case. Rule is made absolute accordingly. D.S. permitted.

8.9.2000 [D P Buch, J.]